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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,642	07/10/2003	Giuseppe Monti	377/9-1765	3437
28147	7590	03/13/2006	EXAMINER	
WILLIAM J. SAPONE COLEMAN SUDOL SAPONE P.C. 714 COLORADO AVENUE BRIDGE PORT, CT 06605				HARMON, CHRISTOPHER R
ART UNIT		PAPER NUMBER		
		3721		
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

(8)

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/616,642	MONTI, GIUSEPPE
	<b>Examiner</b>	<b>Art Unit</b>
	Christopher R. Harmon	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,6-12,14-18,20-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-12,14-17 and 26-29 is/are rejected.
- 7) Claim(s) 22 and 23 is/are objected to.
- 8) Claim(s) 4,18,20,21 and 24 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/05/05 has been entered as well as the amendment of 12/23/05.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14, 26-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 is dependent upon cancelled claim 13.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 6-12, 14-17 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roseberg (US 3,837,139) in view of Archer (US 5,522,512).

Roseberg discloses a method and apparatus for selecting and feeding articles to containers from main hopper 107; selecting means 10 having tapered section 44 for allowing free passage of size matching articles by adjusting the width of the tapered inlet portion 44; and out through chute 47 to main hopper 107; see figures 1 and 2; column 6, lines 1-8 and 61+. The size matching articles are passed through tapered section 44 to main hopper 107 and then to containers 13 and 14. Non-size matching articles are stopped or "jammed up" at the inlet 44. Hinged shutter 81 operates to remove non-size matching articles at the inlet section; see column 8, lines 45 – column 9, line 28. Roseberg uses sensor 98 for checking the presence of articles (flow) through first channels 93, 94 and second channels 108, 109.

Roseberg does not directly disclose an auxiliary hopper or vibratory feeder as claimed however Archer discloses a similar method and apparatus for sorting articles comprising auxiliary hopper 101 for feeding unselected articles to a selecting means 107 via vibratory feeder 103. It would have been obvious to one of ordinary skill in the art to modify the invention of Roseberg with the feeding devices of Archer in order to supply the selecting means.

Regarding claim 1, Roseberg discloses a hinged shutter 81 with a curved section 82 positionable as desired depending upon the articles to be separated. Because curved portion 82 presents a gradient to the articles passing underneath ie. multiple heights to stop and remove non size matching it would have been an obvious design

choice to configure the curved portion as "shutters". Note: it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 7, the operation of Roseberg is considered cyclical due to the rotating turntable 18.

Regarding claim 8, Roseberg does not disclose allowing articles to accumulate in the hopper 107. However the examiner takes OFFICIAL NOTICE that accumulating articles prior to final dispensing is well known in the art and would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the invention to Roseberg and accumulate articles in hopper 107 for continuously sorting while replacing containers 13 and 14. Note Roseberg discusses separate modes for controlling deflector 101 and performing a predetermined count, etc. ; see column 10, lines 10+.

Regarding claims 9 and 29, Roseberg discloses adjusting the apparatus including shutter 81 so that removed articles may then pass to inlet 44 and to a container; see column 9, line 19+.

Regarding claims 6 and 11, the shutter or removal means of Roseberg is not directly disclosed as actuated in response to the sensed condition of interrupted article flow but the selecting means is construed in operation with sensor 98 as claimed.

#### ***Allowable Subject Matter***

6. Claims 4, 18, 20-21 and 24 are allowed.

7. Claims 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

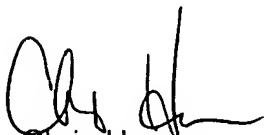
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chris Harmon  
Patent Examiner